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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/633,507	08/07/2000	John Zahorjan	960296.97354	3647

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EXAMINER

SRIVASTAVA, VIVEK

ART UNIT	PAPER NUMBER
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2611

DATE MAILED: 08/12/2004

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/633,507

Applicant(s)

ZAHORJAN ET AL.

Examiner

Vivek Srivastava

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 9-16, 18 and 19 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-8 and 17 is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 9-16, 18 and 19 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1, 2-8 and 17 are drawn to control processing in the server or headed, classified in class 725, subclass 93.
- II. Claims 9-16, 18 and 19 are, drawn to receivers in a VOD system, classified in class 725, subclass 100.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as control processing and scheduling in a VOD system. See MPEP § 806.05(d).

During a telephone conversation with Adam Forman on 8/6/04 a provisional election was made without traverse to prosecute the invention of I, claims 1, 2-8 and 17. Affirmation of this election must be made by applicant in replying to this Office action. Claims 9-16, 18 and 19 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by the article on Reducing I/O demand in Video-On-Demand Storage servers (cited by Applicant) hereinafter “article”.

Regarding claim 1, the Article discloses a system and method of VOD piggybacking. The Article teaches merging two VOD streams, the “target transmission” stream is the initial stream transmitted. The claimed “scheduling a first transmission of a program in response to a client request by a client, wherein the program has a playback rate” is met by the service a second request by a client for the same video (see page 28 paragraphs 2 and 3 on the left). Since there is no change or alteration in the initial or target transmission, the Article discloses the claimed “absent a change in the target transmission”. The Article further discloses receiving a composite of the target transmission and the first transmission (see page 28 paragraphs 2 and 3 and page 29 fig. 4 and the paragraph following, noting the composite as streams l and j). It should be noted that each stream is transmitted in real time, i.e., at the time of request and is not “time distorted”. The Article still further discloses merging the two streams is

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possible by altering the display and transmission rates by adding or removing frame (see page 27 the 4'th and 5'th paragraphs on the left). The target stream will have a transmission rate (playback rate) of 30 frames/sec and the first stream will have a display rate of $30 \times 11/10$ (adding a frame for every 10). It should be noted that the composite data rate, for both streams is "non-integer multiple" of the playback rate $[(30 + 30 \times 11/10)$ or the composite is a non integer multiple of the playback rate 30)].

Allowable Subject Matter

Claims 2-8 and 17 are allowed.

Conclusion

Any response to this final action should be mailed to:

Box AF

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 872-9314 (for formal communications; please mark
"EXPEDITED PROCEDURE")

Or:

(703) 872-9314 (for informal or draft communications, please label
"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121
Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

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1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivek Srivastava whose telephone number is (703) 305-4038. The examiner can normally be reached on Monday-Friday from 8:00am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant, can be reached on (703) 305-4755.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to customer service whose telephone number is (703) 306 0377.

VS

8/7/04



VIVEK SRIVASTAVA
PRIMARY EXAMINER